

APPEAL PANEL OF RACING NEW SOUTH WALES

THE APPEAL OF LUKE PRICE

Appeal Panel: **Mr R. Beasley SC – Principal Member; Mr Murphy; Mrs J Foley**

Appearances: **Mr T Vassallo, for the Stewards**
Mr W Pasterfield for the Appellant

Date of Hearing: **17 August 2020**

Date of Reasons and Orders: **17 August 2020**

REASONS FOR DECISION

1. On 14 July 2020, Racing NSW Stewards charged the appellant to this appeal, licensed trainer Mr Luke Price, with a breach of AR 228(b) of the Australian Rules of Racing. That rule provides that a person must not engage in, amongst other things, “unseemly behaviour”. The particulars of the charge were that he engaged in “unseemly behaviour” by making comments alleged to be intimidatory to licensed trackwork rider Sally Faulks.
2. Ms Faulks was a witness to an incident at track work at Kembla Grange on 21 May 2020, when apprentice rider Madison Waters struck a horse twice in the head following trackwork, causing injury to that horse. As a witness to this incident, Ms Faulks also became a witness to the Stewards’ Inquiry into it. The alleged intimidatory conduct – said to be “unseemly behaviour” to pick up the language of the rule and particulars – was that the appellant was alleged to have said to Ms Faulks: “*Whoever witnessed it [the incident involving Madison Waters striking the horse with her whip in the head] whoever is in there, I’m going to make sure I’m in there and if they say the wrong thing, I’m going to watch them every single day until I find them do something wrong and report them to the Stewards.*” These words were alleged to have been said after trackwork early on the morning of 23 May.

3. After some equivocation, the appellant pleaded not guilty to the charge. The Stewards however found him to be in breach of the rule, and he was penalised by a fine in the sum of \$1500. He appeals to the Panel against the finding of breach of AR 228(b), and (initially) against the penalty imposed. He was represented by leave by Mr Wayne Pasterfield, solicitor. The Stewards were represented by Mr T Vassallo, the Chair of the Panel of Stewards who penalised the appellant. The evidence of the appeal consisted of the Appeal Book, which contained the transcript of the Stewards' Inquiry, and various witness statements. The appellant also gave oral evidence before the Panel.

4. Before discussing the rule itself, and the particulars of breach, there are some matters of fact to decide. At T33 L1620-1636 of the Stewards' Inquiry conducted on 14 July, the appellant gives his version of what was said between himself and Ms Faulks on the morning of 23 May. His evidence was this:

“...I would've said to Sal, 'you'll probably have to be a witness in this thing', I said, 'just go in there, you just tell them the truth'....I would have said those people would've had – or 'I'll be interested to see what other witnesses she gets to come forward as then those people will have a target on their backs because I'll be watching their every move around horses and, as soon as they strike one, that's when I'll report them.”

5. There is some context to this conversation. Shortly before it, the appellant had become upset because he had learnt that another licensed person had been messaging about the incident involving apprentice rider Waters: T33 L1640-45. He described this person as “opening a can of worms, messaging people, saying things for people to say and that”: T 33L 1624-26.

6. At T44 L 2176, Ms Faulks gave evidence at the Stewards Inquiry where she described the conversation on leaving the morning track gallop on 23 May this way:

“...He said, “Maddy looked good on that one”, or “that was a good gallop with those two”, or something like that, and then I said, “yeah, I've got to talk to the Stewards

tomorrow about the incident that happened yesterday”, or “the incident that happened the other day”, I said, and then Luke pretty much just said, “Yeah.whoever is going to be in the Stewards room, I’m going to be there and if they say the wrong thing,” that we’re going to be watched, so if I or someone else does the wrong thing he’s pretty much going to tell on us for doing the wrong thing, like what’s happened with Maddy”.

7. Although not perfectly clear, the Panel makes a finding that the conversation regarding the Inquiry into the incident involving apprentice rider Waters was initiated by Ms Faulks. While that is not consistent with what the appellant told Stewards on 14 July, it is consistent with his sworn evidence at the Appeal hearing today, and with Ms Faulks’ evidence. The Panel also finds that the appellant told Ms Faulks to tell the truth to the Stewards. We also find that he did not speak to her in an overly aggressive tone, a matter supported not only by the appellant’s evidence, but the evidence of Ms Faulks. Nevertheless, we also find that Ms Faulks was intimidated by the comments made to her by the appellant, a matter she agreed to in her evidence (T47 L2333-2339), and something that is consistent with what she told other persons who provided statements to the Stewards (e.g., Statement of Emma Burns). It made the appellant not wish to tell the Stewards what she had seen Waters do: T47 L 2330; T49 L 2443; Statement of Emma Burns)
8. AR 228(b) is in the following terms: “A person must not engage in misconduct, improper conduct or unseemly behaviour.” Unseemly would, as a matter of usual English interpretation, relate to conduct that is “not proper”. We therefore consider that it is directed to “behaviour that is not proper”. The precise particulars of the charge were these:

“....that you did approach licensed trackwork rider Ms Sally Faulks and make comments to her that were intimidatory in nature given that Ms Faulks was a witness in an ongoing inquiry involving your apprentice Madison Waters. These comments included words to the effect, “Whoever witnessed it, whoever is in there, I’m going to make sure I’m in there and if they say the wrong thing I’m going to watch the every single day until I find them do something wrong and report them to the Stewards.”

9. We do not consider that a finding of breach of this Rule turns on intent. A person can engage in behaviour that is unseemly or “not proper” without intending to. We consider these matters must be considered objectively (although intent will no doubt be relevant to penalty). The issue is not whether the appellant intended his words to be intimidatory, but whether, viewed objectively, they were, and hence amount to unseemly or not proper behaviour.
10. The appellant has told the Stewards that he said these words to Ms Faulks, in the context where she was the next day going to give evidence about whether his apprentice had struck a horse in the head with a whip:

“I would have said:

- (a) “I’ll be interested to see what other witnesses she gets to come forward as then those people will have a target on their backs” (not particularised in the charge, but relevant to context).
 - (b) “I’ll be watching their every move around horses”.
 - (c) “...as soon as they strike one, that’s when I’ll report them” (see T 33L1628-31).
11. We accept that these statements were prefaced by telling the persons to whom it they were directed – which included Ms Faulks – that they (and Ms Faulks specifically) should tell the truth. We also accept that Ms Faulks raised the topic of the Inquiry. However, by speaking to witnesses about the evidence they might give at an Inquiry into his apprentice’s conduct, the appellant was entering dangerous and unwise territory. By using phrases like “target on their backs”, “I’ll be watching their every move”, and “I’ll report them”, he went beyond that, whether he meant to or not. Objectively viewed, both separately and in totality, what the appellant said was in the circumstances intimidatory. They are not the comments that someone should make to a witness the day before they are to give evidence at a Stewards’ Inquiry. Whether intended to or not, and no matter the tone, they communicate a kind of threat. They were objectively intimidatory, and they had an intimidatory effect on Ms Faulks. That is conduct that is unseemly in relation to an upcoming Stewards’ Inquiry. It is clearly “not proper”.

12. Accordingly, the Panel finds the charge to be made out. The appeal against breach of the Rule is dismissed.
13. Before the Panel was also an appeal against the penalty imposed. After a warning from the Panel (in the form of a “Parker direction”), that appeal was withdrawn
14. The Panel makes these orders:
 1. Appeal against finding of breach of AR 228(b) dismissed.
 2. Finding of breach of AR 228(b) confirmed.
 3. Appeal against severity of penalty withdrawn by leave.
 4. Penalty of a fine in the sum of \$1500 confirmed.
 5. Appeal deposit forfeited.